

**FIRST AMENDMENT TO THE
PURCHASE AND SALE AGREEMENT
FOR
LONG TERM STORAGE CREDITS**

This First Amendment to the Purchase and Sale Agreement for Long Term Storage Credits (“First Amendment”), executed this ____ day of ____, 2019 (“First Amendment Effective Date”) is made and entered by and between the Arizona Water Banking Authority (“AWBA”), an authority established under Chapter 14, Title 45 of the Arizona Revised Statutes (“A.R.S.”), added by Law 1996, Ch. 308, § 16, effective April 30, 1996, and the Ak-Chin Indian Community (“Ak-Chin”), a federally recognized Indian tribe.

RECITALS

A. The AWBA desires to purchase Long-Term Storage Credits developed by Ak-Chin pursuant to A.R.S. §§ 45-801 *et seq.*, for the benefit of meeting the AWBA’s storage goals.

B. Ak-Chin is willing to sell and transfer certain Long-Term Storage Credits to AWBA upon the price, terms and conditions set forth herein and in that certain Purchase and Sale Agreement for Long Term Storage Credits (the “Agreement”) entered into by and between AWBA and Ak-Chin, executed April 10, 2018.

C. Pursuant to Article 8.9 of the Agreement, AWBA and Ak-Chin now desire to amend the Agreement to provide for the purchase and sale of Tucson AMA Long-Term Credits in addition to Phoenix AMA Long-Term Storage Credits, and to amend the total amount of Long-Term Storage Credits sold, the pricing for those credits, and certain other provisions of the Agreement as described herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

AMENDMENT

1. Definitions. All capitalized terms used herein, but not otherwise defined, shall have the meanings assigned to them in the Agreement.
2. Entire Agreement. Except as expressly modified by this First Amendment, the Agreement shall remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding, and enforceable obligations of AWBA and Ak-Chin. This First Amendment, including the Agreement, constitutes the entire agreement of the parties and supersedes any prior agreements or representations between the parties, whether oral or written, with respect hereto.

3. Amendments.

A. The parties hereby agree to amend the Agreement by replacing Article 1.8 with the following provision:

“Ak-Chin's Long-Term Storage Account” means the Phoenix AMA Long-Term Storage account established pursuant to A.R.S. § 45-852.01 in Ak-Chin’s name and Account No. 70-441244.0000 or the Tucson AMA Long-Term Storage account established pursuant to A.R.S. § 45-852.01 in Ak-Chin’s name and Account No. 70-411520.0000.

B. The parties hereby agree to amend the Agreement by replacing Article 2.1 with the following provision:

Sale and Purchase. Subject to the terms and conditions of this Agreement, Ak-Chin agrees to sell, transfer and assign and AWBA agrees to purchase, acquire, and pay for up to 6,600 acre-feet per annum of Phoenix AMA Long-Term Storage Credits and up to 4,815 acre-feet per annum of Tucson AMA Long-Term Storage Credits. The Long-Term Storage Credits that Ak-Chin agrees to sell and AWBA agrees to purchase during the term of this Agreement shall be determined annually through mutual agreement.

C. The parties hereby agree to amend the Agreement by replacing Article 2.4 with the following provision:

Annual Purchase Price. The annual purchase price for the Long-Term Storage Credits to be transferred pursuant to this Agreement will vary from year to year and shall be based on components of the Central Arizona Project (“CAP”) published annual rate schedule. The purchase price for 6,600 acre-feet of Phoenix Long-Term Storage Credits to be sold by Ak-Chin under this Agreement in 2019 is \$1,488,498.00 calculated using the corresponding formula described in Article 2.5 below. The purchase price for 4,815 acre-feet of Tucson Long-Term Storage Credits to be sold by Ak-Chin under this Agreement in 2019 is \$1,096,182.90 calculated using the corresponding formula described in Article 2.5 below.

D. The parties hereby agree to amend the Agreement by replacing Article 2.5 with the following provision:

Purchase Price Formula. The per-credit purchase price for the applicable year is calculated as follows: Per-credit price = [(CAP Long Term M&I Subcontract Capital Charge + CAP Fixed OM&R Charge + CAP Pumping Energy Rate Charge + CAP Underground Water Storage O&M Charge for the Phoenix or Tucson AMA) / 0.94]. As expressed in numbers reflecting 2019 Final CAP rates, the formula for Phoenix Long-Term Storage Credits is as follows: [(\$41 + \$96 + \$62 + \$13) / 0.94 = \$225.53]. As expressed in numbers reflecting 2019 Final CAP rates, the formula for Tucson Long-Term Storage Credits is as follows: [(\$41 + \$96 + \$62 + \$15) / 0.94 = \$227.66].

E. The parties hereby agree to amend the Agreement by replacing Article 3.1 with the following provision:

Long-Term Storage Credit Transfer Form. To evidence the transfer of Long-Term Storage Credits, Ak-Chin and AWBA shall complete, sign and deliver the Long-Term Storage Credit Transfer Form to ADWR upon full execution of this Agreement and any amendments. A copy of the Long-Term Storage Credit Transfer Form is attached as Exhibit B to this Agreement. Ak-Chin shall execute and deliver the signed Long-Term Storage Credit Transfer Form with its acceptance and execution of this Agreement. AWBA shall deliver the fully executed Long-Term Storage Credit Transfer Form to ADWR within seven (7) business days of its receipt from Ak-Chin.

F. The parties hereby agree to amend the Agreement by replacing Article 4.2 with the following provision:

Payment. Upon ADWR Acceptance, Ak-Chin shall invoice the AWBA the full annual purchase price as specified in Article 2.4 for 2019 and calculated in Article 2.5 above for subsequent years. AWBA shall pay the full amount of the annual purchase price within thirty (30) calendar days of receipt of the invoice.

G. The parties hereby agree to amend the Agreement by replacing Exhibit A in its entirety with the following:

EXHIBIT A
to
Purchase and Sale Agreement for Long Term Storage Credits

(revised July 2019)

LONG-TERM STORAGE CREDITS

| Facility Name | ADWR Facility Permit | ADWR Water Storage Permit | ADWR Long-Term Storage Account | Credits (AF) | Water Source |
|----------------------|-----------------------------|----------------------------------|---------------------------------------|---------------------|---------------------|
| Hieroglyphic USF | 71-584466 | 73-584466.1900 | 70-441244 | 3,300 | CAP |
| RWCD GSF | 72-545695 | 73-545695.2300 | 70-441244 | 3,300 | CAP |
| Lower Santa Cruz USF | 71-561366 | 73-561366.1600 | 70-411520 | 4,815 | CAP |

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the First Amendment Effective Date set forth above.

ARIZONA WATER BANKING AUTHORITY

By: _____
Thomas Buschatzke
Its: Chairperson

ATTEST: _____
Kathryn A. Sorensen
Secretary

AK-CHIN INDIAN COMMUNITY, a federally recognized Indian tribe.

By: _____
Robert Miguel
Its: Chairman

APPROVED AS TO FORM: _____

ATTEST: _____